



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

APR 02 2003

Marc Elias, Esq.
Perkins & Coie, LLP
607 Fourteenth Street, NW
Washington, DC 20005

Re: MURs 4935 and 5057 (Abraham Roth)

Dear Mr. Elias:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on July 25, 2000, found that there was reason to believe that your clients, Dear for Congress and Abraham Roth, as treasurer, violated 2 U.S.C. § 441f; 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a); 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d); 11 C.F.R. § 104.5(a); 2 U.S.C. § 434(b)(4)(F) and 2 U.S.C. § 434(b)(8); and 2 U.S.C. § 434(a)(6)(A). The Commission also instituted an investigation into this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that the above-referenced violations have occurred.

The Commission may or may not approve the General Counsel's recommendations. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe the violations have occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Delbert K. Rigsby or Danita C. Lee, the attorneys assigned to this matter, at (202) 694-1650.

Sincerely,



Lawrence H. Norton
General Counsel

Enclosure
Brief

2025-04-04 14:09:23

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Abraham Roth

)
) MUR 4935
) MUR 5057
)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On July 25, 2000, the Federal Election Commission (the "Commission") found reason to believe that Dear for Congress, Inc. (the "Committee") and Abraham Roth, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) by accepting excessive contributions of \$563,913, and violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d) by accepting prohibited contributions of \$12,320. The Commission also found reason to believe that the Committee and Mr. Roth violated 2 U.S.C. § 441f by knowingly accepting contributions in the name of another person totaling \$50,150. Moreover, the Commission found reason to believe that the Committee and Mr. Roth filed the July 1998 Quarterly Report and the 1998 Year-End Report late and improperly reported debts of \$300,878 (contributions to be refunded) as disbursements on its 1999 Mid-Year Report. Furthermore, the Commission found reason to believe that the Committee and Mr. Roth failed to file or untimely filed 48-hour notices on contributions totaling \$77,500. Finally, on July 25, 2000, the Commission found reason to believe that Dear 2000, Inc., and Abraham Roth, as treasurer ("Dear 2000") violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) by knowingly accepting an excessive contribution and violated 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(4) by failing to report the contribution.

II. ANALYSIS

A. Responsibilities of Treasurers

The Federal Election Campaign Act of 1971, as amended, (the "Act") requires every political committee to have a treasurer. 2 U.S.C. § 432(a). The treasurer has significant responsibilities with respect to the receipt of contributions; indeed a political committee cannot even accept contributions during any period in which the office of treasurer is vacant. *Id.* Every contribution accepted by a political committee is forwarded to the treasurer and must be examined for legality by the treasurer. Every person who receives a contribution for an authorized political committee must, no later than 10 days after receiving such contribution, forward the contribution to the treasurer. 2 U.S.C. § 432(b)(1). Once the treasurer receives these contributions, pursuant to the Commission's implementing regulations, the treasurer is responsible for examining them for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations. 11 C.F.R. § 103.3(b) (1998). "Precisely because of the difficulty in keeping track of" numerous contribution checks, "there is nothing irrational about Congress's decision to insist that all funds coming into, and going out of, a committee pass through a single entry-exit point- the treasurer." *Federal Election Commission v. Toledano*, 317 F.3d 939, 947 (9th Cir. 2002).

In addition to responsibilities related to receipt of contributions, under the Act, a treasurer is also required to keep an account of various records of the committee, 2 U.S.C. § 432(c); to preserve all records required to be maintained and all reports required to be filed for three years, 2 U.S.C. § 432(d); and to file reports of receipts and disbursements and sign each report,

2 U.S.C. § 434(a)(1). “The treasurer thus plays a pivotal role in the statutory scheme” and is held “personally responsible for the committee’s recordkeeping and reporting duties.” *Toledano*, 317 F.3d at 947.

During the course of the Commission’s investigation into this Matter, Abraham Roth’s conduct as treasurer was examined. Mr. Roth testified that he was an experienced certified public accountant who ran his own accounting business with a partner. Claiming to be “naïve” about the requirements of serving as treasurer to a federal political committee, Roth admitted to being focused on Committee disbursements, rather than receipts. Roth deposition at pp. 65-70. Nevertheless, he claimed that he was familiar with contribution limitations and prohibitions and had instructed staff to “follow the rules.” *Id.* at pp. 17, 24, 29. Mr. Roth admitted to performing a very general review of disclosure reports, relying on others to prepare them, although he could not testify who prepared the reports or gathered the information contained in them. *Id.* at pp. 21-22. Although the Committee received numerous Requests for Additional Information from the Commission’s Reports Analysis Division during the campaign, Mr. Roth claimed that he was unaware of them, even though they were sent to his attention at his business address. He explained that campaign staff would pick up any campaign mail (usually contribution checks) before he had a chance to see it, and they did not inform him of the Requests. *Id.* at pp. 70, 76-77.

B. Contributions in the Name of Another

1. Law

The Act prohibits any person from making a contribution in the name of another person.

2 U.S.C. § 441f. The Act also prohibits any person from knowingly permitting his or her name

to be used to effect a contribution made by one person in the name of another person. *Id*

Finally, the Act prohibits the knowing acceptance of a contribution made by one person in the name of another person. *Id.*

2. Facts

The Commission identified fifteen instances in which the Committee accepted two or more contributions through money orders bearing sequential serial numbers. These fifteen sequences contained sixty-three money orders representing contributions of \$50,150. These sequential money orders, purporting to be from different individuals, appeared to be executed in similar handwriting (any given sequence was in the same apparent handwriting, but there were differences among the fifteen sequences). Twenty money orders were issued by branches of Citibank located in Brooklyn, New York and twenty-one money orders were issued at Reliable Check Cashing branches also located in Brooklyn, New York.

During the audit, the Committee contacted some of the individuals to obtain confirmation about their contributions. The Committee also submitted copies of letters sent to contributors whose money order contributions were questioned by the Commission. In these letters, the contributors were asked to confirm that they made the contributions with their personal funds. The Committee submitted the responses received from those contributors to the Commission. However, the Committee only submitted confirmation letters and responses from 32 of the 63 individuals who made questionable money order contributions. This Office investigated whether any of the 63 individuals were ever contacted by the Committee. In a deposition of Committee treasurer, Abraham Roth, he testified that "I do remember we sent this letter out to various money order contributors," but he could not confirm whether they were sent to all of the

questionable money order contributors. Roth deposition at p. 56. Mr. Roth also testified that the signature on the confirmation letters was not his signature, but that he may have authorized someone to sign them on his behalf. *Id.* Mr. Roth recalled drafting the form letter in conjunction with the Committee's attorneys. *Id.* at p. 57. Bella Vais testified that she could not recall whether she signed the confirmation letters on behalf of Roth nor recall whether the letters were sent to the contributors. Vais deposition at pp. 85-86. Charna Weiss, an administrator in Abraham Roth's accounting firm, was listed as the contact person on the confirmation letters. In her deposition, Ms. Weiss testified that she never saw the form letter and that no contributor contacted her regarding their contributions. Weiss deposition at pp. 65-67.

In fourteen instances, the signatures on the confirmation responses differed from the purported contributors' signatures on their money order contributions. For instance, Zev Anfang stated that he has never given any money to a politician and he does not buy money orders. In eight instances, individuals who purportedly filled out confirmation forms from the Committee denied contributing to the campaign, as well as signing the confirmation form. For instance, Joshua Schwartz stated that he was unfamiliar with the Committee and never gave the Committee a money order nor authorized anyone to put his name on a money order. Thus, this Office views many of the "confirmations" collected by the Committee to be of doubtful authenticity.

Moreover, in the course of the Commission's investigation, it has been established that many money order "contributors" did not make contributions to the Committee and, in some cases, have not ever heard of the Committee. Additionally, evidence demonstrates that Committee staff filled out several money order contributions. Seventeen conduits denied making

a contribution to the Committee in the form of a money order.¹ The purported money order contributions by those seventeen conduits totaled \$13,500. Most of these conduits either denied having heard of Noach Dear or denied having ever given a contribution to any political candidate. In three instances (Greenbaum, Hamill, Huppert), the conduits acknowledged that a family member might have made contributions in their name. In another case (Hyatt), the conduit speculated that a friend or family member may have used her name. In two instances (Perlstein and Weinstein), the conduits acknowledged that they had made contributions to the Committee with a check, which was verified, but they denied having made contributions with money orders. Finally, one of the conduits claimed that at a Committee fundraising event, he made a contribution to the Committee in cash instead of by money order, and apparently the Committee used the cash to buy a money order and filled in the contributor's identification information. There were other contributors who denied contributing, but provided no explanation for why their names were used on the money orders. Additionally, many contributors resisted cooperating with this Office by refusing to respond to Commission letters and telephone calls. In many instances, the individuals were named as money order contributors in sequences of money orders where other persons within the sequence have informed us that they did not contribute to the Committee. In other cases, individual contributors provided us

¹ Those conduits and the amount contributed are: Zev Anfang (\$1,000), Barney Freedman (\$250), Pearl Greenbaum (\$1,000), Jon Hamill (\$1,000), Sam Hollander (\$500), Bill Huppert (\$1,000), Susan Hyatt (\$400), Matthew Jones (\$250), Markus Mandelkorn (\$1,000), Berel Oberlander (\$1,000), Hershel Perlstein (\$1,000), David Piller (\$1,000), Michelle Portnoi (\$1,000), Joshua Schwartz (\$700), Joshua Weinstein (\$1,000), Leo Yakubovich (\$700), and Zitta Yakubovich (\$700).

with confirmation that they contributed although there is strong evidence that they were not being truthful.²

In addition to the evidence supplied by purported contributors, other evidence demonstrates that Committee officials filled out money orders. A senior Committee staff member acknowledged filling out several money orders and testified that another staff member's handwriting appears on other money orders. Nick Lagemann, Finance Director of the Committee, admitted that it was his handwriting on three money orders for a thousand dollars each using the names of Joshua Weinstein, Hershel Perlstein, and Bernard Strulovich. The three money orders were numbered consecutively and were purchased on January 23, 1998 at Reliable Check Cashing, 1277 39th Street, Brooklyn, New York. Mr. Lagemann's handwriting also appears on the payee line on money orders for Moishe Geller, Jose Bernstein, Yaakov Einhorn, and Chaim Witt. These money orders were purchased at Reliable Check Cashing, 1275 50th Street, Brooklyn, New York. In regard to the money orders filled out by Nick Lagemann, two of the purported contributors, Mr. Weinstein and Mr. Perlstein, say that they made contributions to the Committee, but did not make any contributions in the form of money orders.

Additionally, Mr. Lagemann recognized the identical handwriting on six money orders as the handwriting of Bella Vais. Ms. Vais was the Chief of Staff in Noach Dear's City Council office and a Committee volunteer. Three of these money orders, purportedly from Alexander

² For instance, conduit Alexander Vais told an FEC attorney that he made a contribution to the Committee through a money order and that it was most likely solicited through an acquaintance at his child's school. He could not definitively say whether he knew anyone who worked for the Committee, but that maybe someone at his child's school was involved with the Committee. Subsequently, this Office determined that Alexander Vais' wife was Bella Vais, the Chief of Staff for the candidate city council's office. She was perhaps the single most influential staff person at the campaign. Other testimony establishes that Bella Vais filled out the money order bearing Alexander Vais' name.

Vais, Basheva Dear and Sarah Scherman, were numbered consecutively, for a thousand dollars each. Each money order was dated December 16, 1997, and was purchased at Reliable Check Cashing, 1275 50th Street, Brooklyn, New York. The other three money orders were from Joshua Schwartz, Leo Yakubovich, and Zitta Yakubovich, and were in the amount of \$700 each, dated July 16, 1998 and purchased at a branch of the United States Postal Service.

Mr. Lagemann also recognized the handwriting on the payee line on money orders purportedly from Michelle Portnoi and Markus Mandelkorn as the handwriting of Bella Vais.³ Both of these money orders were issued on June 30, 1998 in amounts of \$1,000 each, purchased at Citibank, 1220 Avenue J, Brooklyn, New York. Furthermore, Mr. Lagemann recognized that other money orders were purchased at a Citibank branch in Borough Park, at which the Committee deposited contribution checks.

Testimony establishes that Ms. Vais played a major role in the Dear campaign.

Mr. Lagemann and Scott Garrison, a fundraising consultant to the Committee who worked out of the campaign office on a daily basis, testified that Ms. Vais was involved in fundraising and campaign operations such as assisting in organizing fundraisers and calling individuals to solicit contributions. Ms. Vais generally split her time between the campaign and the city council office, but in 1998, she spent most of her time at the campaign office. Mr. Garrison and

Mr. Lagemann also described Ms. Vais as a resource on campaign operations since she was a long-time employee of Noach Dear and was well known to many supporters of Mr. Dear

³ Demonstrating his familiarity with Ms. Vais' signature, Mr. Lagemann also identified Ms. Vais' handwriting on a disbursement check to a vendor, a refund check to a contributor, and one of the Committee's disclosure reports.

who were targeted as potential contributors to the Committee. In regard to filling out money orders, Mr. Garrison stated "I don't know who else would be in a position to do that sort of thing . . . I don't see how this could happen without Bella" Garrison deposition at p. 109. Scott Garrison testified that Ms. Vais was "involved in the campaign a great deal" and that she, along with Mr. Lagemann, would have been in a position to convert big contributions into smaller money order contributions because they were "the people who dealt with major contributors" and "would have been the clearinghouse for that coming into the campaign." *Id.* at p. 93. Mr. Garrison noted, "as a practical matter, the level of engagement and manner of engagement, no, I can't think of anybody else that it might have been."⁴ *Id.* at p. 110.

With respect to the money order contributions purportedly made by Alexander Vais, Basheva Dear and Sarah Scherman, Ms. Vais testified that she did not know or could not recall whether the handwriting on those money orders was her handwriting.⁵ Vais deposition at pp. 66-70. When questioned whether the handwriting on Alexander Vais' money order was the handwriting of her husband, Alexander Vais, Ms. Vais stated that she did not know. *Id.* at p. 102. Ms. Vais also testified that the handwriting "Dear for Congress" on the money order for Markus Mandelkorn looked like her handwriting, but she was not sure. *Id.* at p. 56. Additionally, she testified that she did not recognize the handwriting "Dear for Congress" on the

⁴ Notwithstanding Scott Garrison's and Nick Lagemann's description of Ms. Vais' central role in the campaign, Ms. Vais testified that her primary duties were answering telephones and stuffing envelopes. She denied being involved in fundraising for the Committee or in other aspects of the campaign operations. She acknowledged that she was at Dear campaign headquarters "every day," but denied that she had a significant role. Vais deposition at p. 26. She acknowledges that she was the Finance Director for Noach Dear's New York State Senate campaign in 2002, but says that she was not involved in financing the 1998 campaign. *Id.* at p. 92.

⁵ Alexander Vais is Bella Vais' husband. Basheva Dear is Noach Dear's sister-in-law, and Sarah Scherman is Noach Dear's sister. Mr. Lagemann had identified Bella Vais as the writer of the money orders.

money order for Michelle Portnoi. *Id.* at p. 52. With respect to the handwriting on the money orders for Joshua Schwartz, Leo Yakubovich and Zitta Yakubovich, Ms. Vais stated that she did not know or could not recall whether it was her handwriting. *Id.* at pp. 59-61.

There is additional evidence relating to the money orders that Nick Lagemann identified as having been filled out by Bella Vais. While Alexander Vais, Sarah Scherman, and Basheva Dear state that they made contributions to the Committee via money orders with their personal funds, their signatures on the confirmation letters are different than their signatures on the money order contributions. Joshua Schwartz submitted an affidavit stating that he did not make a contribution to the Committee nor did he authorize anyone to sign his name on a money order. In regard to Leo Yakubovich and Zitta Yakubovich, the Committee provided the Commission staff with copies of letters purportedly from Leo and Zitta Yakubovich confirming that they made money order contributions to the Committee with their personal funds. However, in a written communication to the Office of General Counsel, Leo and Zitta Yakubovich denied making any contributions to the Committee. Their signatures on the letters to the Office of General Counsel are different from the signatures on the letters submitted by the Committee to the Commission purportedly confirming that they made money order contributions. Finally, Michelle Portnoi and Markus Mandelkorn also denied making contributions to the Committee. According to Mr. Lagemann, their purported money order contributions were partially filled out by Bella Vais.

Moreover, there is strong evidence regarding the authenticity of money orders purchased at Citibank, Reliable Check Cashing, Chase Bank, and the United States Postal Service including those filled out by Nick Lagemann or Bella Vais. In regard to money orders purchased at these locations, a considerable number of the purported money order contributors denied making the

contributions. There were 20 money orders purchased at a Citibank branch totaling \$18,000. Seven of these purported money order contributors or slightly more than one-third denied making the contributions. There were seven series of sequential money orders among the Citibank money orders, and there was at least one individual in four of the series that denied making a contribution. In one instance, all three individuals in a series of money orders denied making the contribution. Evidence shows that Bella Vais filled out the payee line on two of those money orders.

There were 21 money orders in six sequentially-ordered series totaling \$19,000 that were purchased at an outlet of Reliable Check Cashing. Three money orders completely filled out by Nick Lagemann totaled \$3,000, and were in the same series of money orders. Mr. Lagemann also filled out the payee line on four other money orders totaling \$4,000, which were also within the same series.

There were also three sequentially-ordered money orders purchased at Chase Bank for a total of \$750, and all money orders are in the same handwriting. Two of the purported contributors denied making a contribution. The Office of General Counsel could not locate the third individual.

There were three money orders purchased at the United States Postal Service that evidence indicates were completely filled out by Bella Vais, and all three individuals, Joshua Schwartz, Leo Yakubovich, and Zitta Yakubovich denied making a contribution. With respect to these individuals, the Committee provided the Commission with a form purporting to confirm that they made a contribution to the Committee.

3. Conclusion

The Committee knowingly accepted contributions in the name of another totaling \$39,850 in violation of 2 U.S.C § 441f. Nick Lagemann, a Committee staff person, admitted to filling out money orders in the name of certain contributors, and those same contributors have denied that they made money order contributions. Furthermore, there are money orders that were filled out by Bella Vais, a Committee volunteer. Individuals listed on those money orders have denied contributing. The money orders that were filled out by Nick Lagemann or Bella Vais were either issued by Citibank, Reliable Check Cashing or the Postal Service, in consecutively-numbered sequences. In almost every sequence, at least one of the money orders in the sequence contains Mr. Lagemann's or Ms. Vais' handwriting or is attributed to a person who has denied contributing to the Committee. This pattern strongly suggests that the entire sequence of money orders represents contributions from someone other than the individual listed on the money order. *See U.S. v. Arteaga*, 117 F. 3d 388, 398-399 (9th Cir. 1997) (in money laundering case involving transfers using Western Union forms, the court observed: "The repetition of names and addresses -- with every form overlapping at least one other form in some respect -- permits the inference that all the transfers were parts of a common scheme. Having already inferred that [defendant] filled out the forms found in his apartment, the jury could have rationally concluded that [defendant] filled out all the forms and therefore, that he initiated the transfers"); *see also Jones v. Unknown Agents of the FEC*, 613 F.2d 864, 877 (D.C. Cir. 1979) (agency inquiry justified in case where political contributions are made by sequential money orders and cashier's checks drawn from the same banks); *U.S. v. Ballesteros Gutierrez*, 181 F. Supp. 2d 350, 354 (S.D.N.Y. 2002) (in securities fraud prosecution, personal relationships, temporal proximity of

activity, and size of activity “give rise to the inference” that the activity “took place pursuant to a common scheme”); *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp.2d 502, 530 (S.D.N.Y. 2000) (in matter involving deceptive trade practices, in order to prevail, agency “need not prove that every consumer actually relied upon the misrepresentation.”); *SEC v. Singer*, 786 F. Supp. 1158, 1164 (S.D.N.Y. 1992) (in matter involving securities trading violations, agency permitted to use “circumstantial evidence such as suspicious timing of trades, contacts between potential tippees and tippees, and incredible reasons for such trades” to infer that tipping activity has occurred).

While a source of the funds used to make the contributions has not been identified, it is apparent that the individuals who are reported to have made the money order contributions did not fill out the money orders and do not appear to be the sources for the funds. Section 441f imposes liability against a recipient committee that “knowingly accept[s] a contribution made by one person in the name of another person.” The Committee agents who filled out money orders must have known that the individuals whose names they were entering on the money orders were not the actual contributors and that therefore these contributions were made in the name of another.

Under the Act, every contribution accepted by the Committee must be forwarded to the treasurer, Abraham Roth, and it was his responsibility to examine the legality of each contribution. 2 U.S.C. § 432(b)(1); 11 C.F.R. § 103.3(b) (1998). The fact these contributions were accepted by the Committee demonstrates that Mr. Roth’s review was inadequate. Based on the foregoing, this Office is prepared to recommend that the Commission find probable cause to believe that Abraham Roth violated 2 U.S.C. § 441f by accepting \$39,850 in contributions made in the name of another.

C. Excessive Contributions

A contribution is a gift, subscription, loan, advance, deposit of money, or anything of value made by a person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A); 11 C.F.R. § 100.7(a)(1). The Act and the Commission's regulations prohibit any person from making contributions to any candidate and his or her authorized political committees with respect to any election for federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b)(1). No candidate or political committee may knowingly accept any contribution that violates the contribution limitations. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a).

In connection with its audit of the Committee, the Commission reviewed copies of contribution checks accepted by the Committee for the 1998 election cycle. Based on the review, the Commission determined that the Committee accepted contributions in excess of \$1,000 from 327 contributors. The aggregate amount of contributions in excess of \$1,000 accepted by the Committee was \$563,913.

The Committee failed to show that the contributions were not excessive. The Committee's response to the identification of excessive contributions instead focused on the candidate's supporters' "relatively little experience with the Federal Election Campaign Act and its accompanying regulations" and explained that, although the Committee lacked full understanding of the technical and procedural requirements outlined by the Act, it attempted to comply broadly with the provisions of the Act through:

- Its efforts to limit each contribution attributed to an individual to \$1000;
- Its efforts to seek reattribution letters;

- Its establishment of a separate account for funds raised for the general election and the fact that some contributors specifically designated their contributions to the general election;
- Its collection of employer and occupation data; and,
- Its filing of late contribution notices for approximately 91 percent of the funds received during the 20 days preceding the primary, with notices missing for only four contributions.

The Committee further explained that its treasurer, Abraham Roth, did not fully comprehend the Act's provisions when he informed the Audit staff that "he did not consider contributions in the amount of \$2,000 made by checks drawn on joint checking accounts to be excessive." The Committee also pointed to its efforts to refund the excessive contributions and its commitment to disclosing pending refunds on Schedule D forms.

The Committee's response does not refute its knowing acceptance of contributions in excess of the \$1,000 aggregate limit on personal contributions. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a). The \$1,000 contribution limitation is a fundamental restriction on the financing of federal election campaigns, and the Committee's attempt to dismiss this limit as easily misunderstood or an overlooked technicality must be rejected.

Under the Act, every contribution accepted by the Committee must be forwarded to the treasurer, Abraham Roth, and it is his responsibility to examine the legality of each contribution and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations. 2 U.S.C. § 432(b)(1); 11 C.F.R. § 103.3(b) (1998). The fact these contributions were accepted by the Committee demonstrates that Mr. Roth's review was inadequate. Accordingly, this Office is prepared to recommend that the Commission find probable cause to believe that Abraham Roth violated

2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) by knowingly accepting contributions in excess of the \$1,000 aggregate limit on contributions.

D. Prohibited Contributions

Corporations are prohibited from making contributions in connection with federal elections. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2. No candidate or political committee may knowingly accept such a contribution. 11 C.F.R. § 114.2(d).

While conducting its audit of the Committee, the Commission reviewed copies of contribution checks accepted by the Committee during the 1998 election cycle and identified 19 possible prohibited contributors in the aggregate amount of \$12,320. These contributions were made by corporations between September 1997 and September 1998, and ranged in amount from \$100 to \$2,500.⁶ The Committee offered no defense regarding these prohibited corporate contributions.

Under the Act, every contribution accepted by the Committee must be forwarded to the treasurer, Abraham Roth, and it is his responsibility to examine the legality of each contribution. 2 U.S.C. § 432(b)(1); 11 C.F.R. § 103.3(b) (1998). The fact these contributions were accepted by the Committee demonstrates that Mr. Roth's review was inadequate. Consequently, this Office is prepared to recommend that the Commission find probable cause to believe that Abraham Roth violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d) by knowingly accepting prohibited corporate contributions.

⁶ Fifteen of these contributions were paid to the order of Dear for Congress, three were made out to Noach Dear, and one to Friends of Noach Dear

E Late Reports

Each treasurer of a political committee shall file reports of its receipts and disbursements. 2 U.S.C. § 434(a)(1). Each report shall disclose for the appropriate reporting period all receipts. 2 U.S.C. § 434(b)(2). Each report also shall disclose for the appropriate reporting period all disbursements, including contribution refunds. 2 U.S.C. § 434(b)(4)(F). Finally, each report must disclose the political committee's outstanding debts. 2 U.S.C. § 434(b)(8). A political committee's quarterly report is due to be filed no later than the fifteenth day following the close of the quarter. 11 C.F.R. § 104.5(a). A political committee's year-end report is due to be filed on January 31 of the following year. *Id.*

The Committee's 1998 Year-End Report was due to be filed with the Commission no later than January 31, 1999. 11 C.F.R. § 104.5. It was not filed until November 5, 1999 (278 days late). The Committee stated that its failure to file the Year-End Report was the result of a deliberate decision by its Treasurer due to his concern about accounting issues and desire for the report to be accurate.

The Committee's Quarterly Report for the third quarter of 1998 was due to be filed with the Commission no later than October 15, 1998. 11 C.F.R. § 104.5(a). The Committee filed its Quarterly Report for the third quarter of 1998 on October 16, 1998 (one day late).

Therefore, this Office is prepared to recommend that the Commission find probable cause to believe that Abraham Roth violated 11 C.F.R. § 104.5(a) by failing to file a timely Quarterly Report for the third quarter of 1998 and by failing to file a timely Year-End Report for 1998.

F. Misreporting of Refunds

As a result of its audit, the Commission determined that the Committee's 1999 Mid-Year Report disclosed starting cash on hand of \$78,451 (as of January 1, 1999), total receipts of \$101,596 and total disbursements of \$300,878 (all refunds of contributions), and closing cash on hand of -\$120,831. When questioned during the audit, the Treasurer stated that refund checks had been written, but that the checks were not mailed because the Committee did not have sufficient funds. Thus, the Commission determined that the Committee improperly reported refunds that were never made. The Committee in no way disbursed refunds and, had the refund checks actually been sent, the recipients would not have been able to cash the refund checks because the Committee had insufficient funds available to make the payments. The Committee should have reported the necessary refunds as debts until it could actually make the refunds.

Accordingly, this Office is prepared to recommend that the Commission find probable cause to believe that Abraham Roth violated 2 U.S.C. § 434(b)(4)(F) by improperly reporting refunds which had not, in fact, been made. Further, this Office is prepared to recommend that the Commission find probable cause to believe that Abraham Roth violated 2 U.S.C. § 434(b)(8) by failing to report as debts those improper contributions which had not been refunded.

G. 48-Hour Notice Requirements

The Act requires the principal campaign committee of a candidate to notify the Clerk of the House, the Secretary of the Senate, or the Commission, as appropriate, in writing, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the twentieth day, but more than 48 hours before, any election. 2 U.S.C. § 434(a)(6)(A); 11 C.F.R. § 104.5. Notification must be made within 48 hours after the receipt of the contribution and must

include the name of the candidate, the office sought by the candidate, the identity of the contributor, the date of receipt, and amount of the contribution. *Id.* This notification is in addition to all other reporting requirements under the Act. 2 U.S.C. § 434(a)(6)(B).

During the audit, the Commission's Audit staff identified four contributions with respect to which the Committee was required to file 48-hour notices, but failed to do so. *See also* 2 U.S.C. § 434(a)(6)(A). The aggregate amount of these four contributions was \$7,000. The Audit staff also identified 45 contributions with respect to which the Committee failed to file required 48-hour notices until more than 48 hours after receipt. The aggregate amount of these 45 contributions was \$70,500.

The Committee stated that while it failed to file a required 48-hour notice within the time limit set by law with respect to the contributions identified by the Audit staff, it ultimately filed timely notices with respect to approximately 91% of the funds in question. Nonetheless, the Committee failed to file required 48-hour notices within the time period prescribed by law.

Therefore, this Office is prepared to recommend that the Commission find probable cause to believe that Abraham Roth violated 2 U.S.C. § 434(a)(6)(A) by failing to file required 48-hour notices, or filing untimely 48-hour notices, for 49 contributions in an aggregate amount of \$77,500.

H. Polling Expenditures

The Commission's regulations state that funds received and payments made solely for the purpose of determining whether an individual should become a candidate are not contributions. 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1). However, if the individual subsequently becomes a candidate, any funds received are contributions and any payments made are expenditures subject

to reporting requirements of the Act. 11 C.F.R. § 101.3. The individual is required to retain records of the names of each contributor, the dates of receipt and amounts of all contributions received and all expenditures made in connection with determining whether he or she should become a candidate. *Id.* Such contributions and expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received. *Id.*

The purchase of opinion poll results by a candidate or a candidate's authorized political committee or agent is an expenditure by the candidate or a potential expenditure under 11 C.F.R. § 100.8(b)(1). 11 C.F.R. § 106.4(a). Additionally, if a political committee or other person not authorized by a candidate to make expenditures purchases such poll results and a candidate, a candidate's authorized political committee, agent, or another unauthorized political committee subsequently accepts the poll results, an in-kind contribution by the purchaser to the candidate or other political committee and an expenditure by the candidate or other political committee results. 11 C.F.R. § 106.4(b). If an individual uses such poll results to decide whether to become a candidate, a contribution or expenditure does not exist until he or she becomes a candidate. 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1).

In 1999, Noach Dear was a city council member in New York City and his campaign committee for this office was Friends of Noach Dear '93 ("Friends of Dear"). On December 21, 1999, Mr. Dear filed a Statement of Candidacy with the Commission for the 2000 election cycle and named Dear 2000, Inc. as his principal campaign committee. The federal office sought by Mr. Dear was Representative for the 9th Congressional District of New York.

On June 28, 1999, prior to Mr. Dear's filing as a candidate with the Commission, Friends of Dear paid \$20,000 to polling firm Penn, Schoen and Berland for certain polling expenditures. The payment related to a poll of residents within the 9th Congressional District of New York, some of whom, according to the complainant, resided outside of Mr. Dear's city council district. The Commission obtained a copy of the questions used in the poll. Included among the questions are requests for opinions on the performance of Representative Anthony Weiner, the incumbent 9th Congressional District representative in the United States Congress. Some questions seek to compare the leadership qualities and personal characteristics of Noach Dear and Anthony Weiner. Additionally, the poll asks questions about legislative issues pending before the United States Congress. In furtherance of this investigation, a deposition was taken of Abraham Roth, the treasurer for both Dear 2000 and Friends of Dear. Mr. Roth acknowledged that Dear 2000 used the poll results. In fact, after news reports about the poll surfaced and a complaint was filed with the Commission, Penn, Schoen and Berland returned the \$20,000 payment to Friends of Dear and eventually was paid \$40,000, on January 11, 2000, by Dear 2000. Dear 2000 reported the expenditure to Penn, Schoen and Berland on its April 2000 Quarterly Report.

Upon Mr. Dear's declaration of candidacy for federal office on December 21, 1999, any funds he received or spent in connection with determining whether to become a candidate became a contribution or expenditure, respectively. 11 C.F.R. § 101.3. This included any poll purchased by or accepted by Mr. Dear or his authorized political committee. 11 C.F.R. § 106.4. Although Friends of Dear is not a "political committee" under the Act, to the extent that it engaged in activities intending to influence Mr. Dear's candidacy for federal office, it is viewed

as having made an in-kind contribution to his federal campaign. 2 U.S.C. § 431(8). *See also* Advisory Opinion 1985-38. Thus, the poll purchased by Friends of Dear in June 1999 became a reportable in-kind contribution to Dear 2000 when Mr. Dear became a candidate for federal office in December 1999. 11 C.F.R. § 106.4. *See also* Advisory Opinion 1998-18. As the amount paid for the poll was \$20,000, this was an excessive in-kind contribution to Dear 2000 for the 2000 election cycle. 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.9(a). The fact the payment was refunded by the vendor and eventually paid and reported by Dear 2000 does not extinguish the violations. Moreover, these remedial actions took place only after news reports about the poll were published and a complaint was filed with the Commission.

Therefore, this Office is prepared to recommend that the Commission find probable cause to believe that Abraham Roth violated 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(4) by failing to report the receipt of the contribution. Further, this Office is prepared to recommend that the Commission find probable cause to believe that Abraham Roth, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) by accepting the contribution.

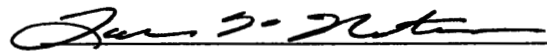
III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that Abraham Roth violated 2 U.S.C. § 441f by accepting contributions in the name of another;
2. Find probable cause to believe that Abraham Roth violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) by accepting excessive contributions.
3. Find probable cause to believe that Abraham Roth violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d) by accepting prohibited contributions;
4. Find probable cause to believe that Abraham Roth violated 11 C.F.R. § 104.5(a) by failing to timely file disclosure reports;
5. Find probable cause to believe that Abraham Roth violated 2 U.S.C. § 434(b)(4)(F) and 2 U.S.C. § 434(b)(8) by improperly reporting refunds and failing to report debts;

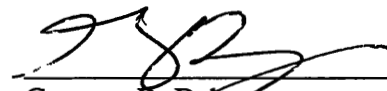
6. Find probable cause to believe that Abraham Roth violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-hour notices or filing untimely 48-hour notices;
7. Find probable cause to believe that Abraham Roth violated 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(4) by failing to report the contribution or report it as an expenditure;
8. Find probable cause to believe that Abraham Roth violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) by accepting an excessive contribution from Friends of Noach Dear '93.

4/2/03

Date



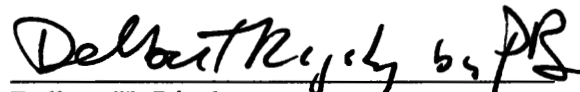
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